IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.1150 OF 2006

Unimarine Agencies Private Limited — Petitioner
vs.
Union of India & ors. — Respondents

Mrs.A.P.Bhide for the petitioner.

Mr.M.I.Sethna, Senior Advocate with Mr.A.M.Sethna,
Advocate i/b.Dr.T.C.Kaushik

**CORAM : R. M. LODHA &**
**J. P. DEVADHAR,JJ**.

**DATED : 20th April, 2006**

**P.C.**

Heard.

2. The Deputy Commissioner of Customs, Mumbai by its order dated 19th March, 2003 imposed the penalty of Rs.5,00,000/- (Rupees five lakhs) upon the petitioner for Item L-310 under Section 116 of the Customs Act, 1962. Aggrieved by the said order, the petitioner preferred appeal before the Commissioner of Customs (Appeals) under Section 128 of the Customs Act, 1962 on 9th November, 2004. The appeal was hopelessly barred by time and about 18 months beyond the prescribed limitation. The Commissioner of Customs (Appeals), in the circumstances, dismissed the appeal on the ground of delay. He was not satisfied with the cause shown by the petitioner for condonation of delay. Aggrieved thereby,

the petitioner filed revision before the Government of India under Section 129 DD of the Customs Act, 1962. The revisional authority found that as the appeal was filed after about 18 months from the issuance of the order in original, the appellate authority did not commit any error in dismissing the appeal.

3. By way of this writ petition, the petitioner weeks to challenge the order-in-original dated 19th March, 2003 passed by the Deputy Commissioner of Customs, the order dated 22nd December, 2004 passed by the Commissioner of Customs (Appeals) and the order dated 31st August, 2005 passed by the revisional authority.

4. The counsel for the petitioner would submit that the petitioner now challenges the order-in-original on merits and that this Court is not bound by the period of limitation and, therefore, extra-ordinary jurisdiction of this Court deserves to be invoked. .

5. The argument does not appeal us. The petitioner put in issue of correctness of the order-in-original dated 19th March, 2003 by filing appeal before the Commissioner of Customs (Appeals). That the appeal preferred by the petitioner before the Commissioner of Customs (Appeals) was beyond 18 months of the said order is not in dispute. Section 128 of the Customs Act, 1962

provides for an appeal to the Commissioner (Appeals) from an order passed by the Officer of customs lower in rank than a Commissioner of Customs. Proviso appended to sub-section (1) of Section 128 prescribes the limitation for filing the appeal. The limitation for filing the appeal is 60 days. However, the Commissioner (Appeals) is empowered to condone the delay for a period of 30 days if the appellant shows the sufficient cause. The bare perusal of Section 128 (1) and the proviso appended thereto leaves no manner of doubt that the Commissioner (Appeals) has power to condone the delay on sufficiency of the cause shown but to an extent of 30 days from the expiry of the period of limitation. Dealing with the similar situation, with reference to Section 35 of Central Excise Act, 1944 and Sections 5 and 29(2) of Limitation Act, 1963, in the case of Navinon Limited v. Union of India & anr., **2005(1) Bom.C.R. 58**, it was held that the appellate authority could extend the period of limitation upto 30 days of expiry of the statutory period of 60 days and beyond 30 days of the statutory period of 60 days, the Commissioner of Appeals has no power to condone the delay.

7. Admittedly, in the instant case, the appeal was preferred by the petitioner from the order in original beyond 18 months. The Commissioner (Appeals) had no

power of condoning such long delay. The legislative intent for filing the appeal within a particular time being clear and power of condonation having been restricted to 30 days from the expiration of statutory period, this Court would not invoke extraordinary jurisdiction to nullify the statutory provision contained in Section 128. As has been held by the Supreme Court of India, in the case of Union of India v. Kirloskar Pneumatic Company, **1996 (84) E.L.T.401**, Articles 226 and 227 do not clothe the High Courts in directing the authorities to act contrary to law, particularly the authorities who are creatures of the statute.

8. For the reasons indicated by us above, we are of the view that the Writ petition does not deserve to be admitted. We dismiss the writ petition in limine accordingly.

**(R.M. LODHA,J.)**

**(J.P. DEVADHAR,J.)**